Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

Major K. Weldon and
Crystal C. Weldon,

Petitioners,

v.

Farm Credit Services of Michigan's
Heartland, PCA,

Respondents

On Petition For A Writ Of Certiorari
To The Michigan Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether state courts have power to nullify and/or abrogate express contractual provisions of a federally chartered corporation established under the Farm Credit Act, 12 U.S.C. § 2071.

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PETITION FOR A WRIT OF CERTIORARI

Major K. And Crystal C. Weldon respectfully petition for a writ of certiorari to review the judgement of the Michigan Court of Appeals.

OPINIONS BELOW

The opinion of the Michigan Court of Appeals (App., infra, 8-27) is reported at 232 Mich. App. 662. The order of the Michigan Supreme Court denying application for leave to appeal is unreported. (App, infra, 28) The orders of the trial court in the Livingston County Circuit Court are unreported. (Petitioners order, App., infra 29-32, Respondent's order App., infra 33-36).

JURISDICTION

The Michigan Supreme Court entered its order denying application for leave to appeal on August 31, 1999. (App., infra, 28). The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (a) as the decision below is repugnant to the laws of the United States. In the alternative, jurisdiction is invoked under 28 U.S.C. § 1651 for the reasons stated below.

STATUTORY PROVISION INVOLVED

The Farm Credit Act, and its amendment, the Agricultural Credit Act are found at 12 U.S.C. § 2001 et seq. ; the respondent is a federally chartered corporation established under 12 U.S.C. § 2071.

The lower court opinion presents an intolerable conflict with 12 U.S.C. § 2202d.

12 U.S.C. § 2202d (b) Prohibition against required principal reduction.

> A qualified lender may not require any borrower to reduce the outstanding principle balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principle installment payment (when due and payable), unless – (1) the borrower sells or otherwise disposed of some or all of the collateral; or (2) the parties agree otherwise by a written agreement entered into by the parties.

Many courts have held there is no private right of action under the Farm Credit Act, or its amendment, the Agricultural Credit Act. See *Agri Bank FCB v. Cross Timbers Ranch, Inc.*, Mo. App. S.D. 1996, 919 S. W.2d 263. *Jarrett Ranches, Inc. v. Farm Credit Bank of Omaha*, D.S.D. 1990, 128 B. R. 263. *Wiener v. Farm Credit Bank of St. Louis*, E.D. Ark 1991, 759 F. Supp. 510, affirmed 975 F. 2d 1350. *Wagner v. Penn West Farm Credit, ACA*, C.A. 3 (Pa) 1997, 109 F. 3d 909. *Redd v. Federal Land Bank of St. Louis*, C.A.8 (Mo.) 1988, 851 F. 2d 219. *Aberdene Production Credit Association v. Jarrett Ranches, Inc.*, D.S.D. 1986, 638 F. Supp. 534. *Grant v. Farm Credit Bank of Texas*, C.A. 5 (La) 1993, 8 F. 3d 295. *Farm Credit Bank of Spokane v. Debuf*, D. Mont. 1990, 757 F. Supp. 1106. *Walker v. Federal Land Bank of St. Louis*, C. D. Ill 1989, 726 F. Supp. 211. *Burgmeier v. Farm Credit Bank of St. Paul*, Minn. App. 1993, 499 N. W. 2d 43, *review denied. Saltzman v. Farm Credit Services of Mid- America, ACA*, C.A. 7 (Ind.) 1991, 950 F. 2d 466. *Zajac v. Federal Land Bank of St. Paul*, C.A. 8 (N.D.) 1990, 909 F. 2d 1181. *Renick Bros, Inc. v. Federal Land Bank Association of Dodge City*, D. Kan. 1989, 721 F. Supp.1198. *Farm Credit Bank of St. Louis v. Dorr*, Ill. App. 5 Dist. 1993, 620 N.E. 2d 549, 189 Ill. Dec. 581, 250 Ill. App. 3d 1.

It is well settled there is no express or implied private right of action under either the Farm Credit Act of 1971 or its amendment, the Agricultural Credit Act of 1987. Therefore, the petitioners brought the action on the contract, the Basic Loan Agreement and the Supplementary Loan Agreement, used by thousands of similar farm credit borrowers across the nation.

Consider *Ag America, FCB v. Robson*, Mont. 1995, 901 P. 2d 100, 272 Mont. 413, when mortgage incorporates loan restructuring provisions of Farm Credit Act (FCA), it is affirmative defense to mortgage

foreclosure action that mortgagee has not complied with restructuring requirements of FCA.

For this reason, the extraordinary, common law writ under 28 U.S.C. § 1651, is used here to invoke jurisdiction.

STATEMENT

In June 1992 the petitioner sued, as counter-plaintiffs, Farm Credit Services of Michigan's Heartland, PCA (the respondent). In April 1993 the petitioners as plaintiffs sued Farm Credit Services of Michigan's Heartland, FLCA (hereafter Federal Land Bank), case no. 93-12811-CK, in the Livingston County Circuit Court. The two cases were consolidated and jury trial took place in May 1994.

The petitioners case against the Federal Land Bank rested on facts identical to those against the respondent. The respondent's loan officer, under an Executive Order and a Power of Attorney was acting as the loan officer for the Federal Land Bank and the respondent, simultaneously. The Agricultural Credit Act of 1987 had allowed the merger. 12 U.S.C. § 2279 c-1; 12 C. F.R. 619.9015. FLB and PCA remained separate legal entities despite the merger.

The petitioners claims were partly based on the actions taken by the loan officer when a conflict arose between the two entities, PCA and FLB. The jury found that PCA breached the duty of good faith, contained in the Basic Loan Agreement, Trial Exhibit A,

> **every right, duty, and obligation contained** in or arising under this agreement shall be exercised, enforced, and performed with **good faith**

by refusing to apply 1989 crop proceeds to pay the petitioners mortgage with the Federal Land Bank.

During the course of the jury trial all of the petitioners' claims against the Federal Land Bank were dismissed JNOV based on the statute of limitations. That entity is no longer a party to the litigation.

In dealing with the misapplication of funds issue, the majority opinion in the November 24, 1998 Michigan Court of Appeals opinion decided "as a matter of law" that PCA, holding a crop lien, and han-

dling the $83,000 of crop proceeds, had no duty to relinquish bargained for rights, reversing the jury verdict. The majority cited *Price v. Wells Fargo Bank,* 213 Cal App 3d 465, 479 (1989), also *Van Arnum Co. v Hanover Leasing Corp.*, 776 F. Supp 1220,1223 (ED Mich. 1991) and *Creeger Brick and Building Supply, Inc. v. Mid-State Bank and Trust Co,* 385 Pa Super 30 , 36-37 (1989). None of these cases regarding the duty of good faith involve an express contractual provision. The cited cases involve the covenant of good faith imposed under the common law.

At the trial, the jury also found that PCA engaged in bad faith conduct in 1991 in refusing to advance operating funds to the petitioners. The petitioners objected to this phrasing, in the Jury Verdict Form, as too narrowly framing the issue. Nonetheless, the jury ruled in the petitioner's favor finding that PCA by their actions had intended to force the petitioners out of business.

The majority opinion in the November 24, 1998 Michigan Court of Appeals decision also reversed this jury finding using the same analysis and conclusion of no duty. The dissent, "*there was evidence that plaintiff had agreed to do so even if not obliged to do so.*" Appendix A, page 25. The dissenting opinion would have affirmed the lower court. *"I would find that the defendants presented sufficient evidence to support each claim and that the majority is simply, and improperly, substituting its own judgement for that of the jury."*

During the trial the petitioners agreed to the amount and validity of their outstanding debt to PCA. Later in the proceeding, it was agreed that the outstanding indebtedness would be set off against a potential jury verdict in petitioner's favor if the jury awarded damages for loss of real estate. These agreements became distorted before entry of the cross-judgements and both parties appealed.

REASONS FOR GRANTING THE PETITION

I. The Decision Is Bad Precedent

The November 24, 1998 Michigan Court of Appeals majority opinion, 332 Mich App 662 (Appendix A, pages 8-22), stands as binding

precedent on all circuit courts in Michigan. The writ of certiorari will aid in the Court's appellate jurisdiction as federal courts are also bound by state court of appeals decisions unless there is persuasive evidence that the state's highest court would rule otherwise. The decision abrogated the express language of the Basic Loan Agreement requiring every right, duty, and obligation to be exercised, enforced and performed in good faith. It also abrogated the repayment provisions of the petitioners Supplementary Loan Agreement which required $50,532 to be applied toward principle at the time they tendered $83,000 of crop proceeds.

The dissenting justice in the lower opinion,

> However, the critical fact here is that the contract (April 19, 1989 Supplementary Loan Agreement) required a payment of $50,532.00 principle of the operating note, and the plaintiff applied $66,246.50 to pay the principal on that note. Thus, the check for $83,000 covered the amount the defendants owed on the contract to plaintiff, and covered the additional $10,000 the defendants asked to be applied to the mortgage with the Federal Land Bank. Moreover, the defendants did not discover until several months after instructing Plaintiff to apply $10,000 toward the (FLB) mortgage that plaintiff did not do so. Accordingly, the jury could find that plaintiff, in bad faith, breached a contract when it failed to apply $10,000 towards the mortgage as instructed by defendants.

Appendix A, page 25.

The Basic Loan Agreement and the Supplementary Loan Agreements are standard contracts used by hundreds of Farm Credit System borrowers in Michigan and thousands of Farm Credit System borrowers across the United States. The ruling is dangerous precedent and damaging to the sanctity of contract. Relief is unavailable except in this court.

II. The Decision Is Contrary To Federal Law

This question is created by an unexpected decision of the State Court of Appeals. The litigant had no prior opportunity to anticipate or assert the particular federal question at the trial court. The Court of

Appeal's decision creates an intolerable conflict with 12 U.S.C. § 2202d (b), reproduced above, which expressly forbids a unilateral demand for extra principal payment. The petitioner's claims were not presented as arising under the Farm Credit Act in recognition of the cases denying a private right of action. The federal interest expressed in the statute has been unduly subordinated by the state court opinion.

The petitioners alleged violations of the Farm Credit Act in their application for leave to appeal to the Michigan Supreme Court. The question presented to the Michigan Supreme Court was whether a violation of the Farm Credit Act was a sufficient violation of the law to satisfy an element of duress; the jury having found in the petitioners' favor regarding the granting of a mortgage under duress. The Court of Appeals had ruled that the petitioners had not alleged an illegal act. See *Brinkerhoff-Faris Trust Co. v. Hill,* 281 U.S. 673, 677-78 (1930) *Pruneyard Shopping Center v. Robins,* 447 U.S. 74, 85-86 n 9 (1980) that this court has held federal claims to have been adequately presented even though not raised in lower state courts when the highest state court renders an unexpected interpretation of state law or reverses its prior interpretation.

III. The Decision Conflicts With Prior Supreme Court Cases

By analogy, the application of more funds to the note than was contractually due at the time of the application is contrary to this court's decision in *City National Bank v. Hunter,* 9 S. Ct. 346, 129 U.S. 557, 32 L. Ed. 752. The lower court decision is also contrary to this court's decision in *Whitney v. Wyman,* 101 U.S. 392, 25 L. Ed. 1050. An agreement cannot be afterwards changed by either of the parties without the consent of the other. This is consistent with the language of 12 U.S.C. § 2202d (b).

IV. The Decision of the Michigan Court of Appeals Is Erroneous

By focusing on a common law covenant of good faith and eliminating the express duty of good contained in the party's Basic Loan Agreement, the lower court has abrogated the contract language.

In this instance, the entire Court of Appeals decision should be reviewed. State courts do not have the power to alter the contracts of a federally chartered corporation. The findings below amount to plain error.

V. The Question Presented Is Important

The question presented is of great importance to the agricultural community. If state courts have the power to eliminate or nullify contractual provisions not to their liking great uncertainty will result. If lenders can deviate from repayment requirements, accelerating a loan without notice, with the borrower having no legal remedy, then commerce beyond the agricultural sector and the Farm Credit System would be threatened.

The decision could be expanded beyond crop financing and applied to inventory financing. It could be expanded beyond the Farm Credit system to apply to all lending relationships.

At the present time in Michigan there is a political shift in the judiciary which could produce these unwanted and unnecessary outcomes if the decision stands as precedent.

CONCLUSION

Granting the petition will prevent serious erosion of federal rights and prevent grave miscarriage of justice.

Respectfully Submitted,

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Appendix A

STATE OF MICHIGAN
COURT OF APPEALS

FARM CREDIT SERVICES OF MICHIGAN'S HEARTLAND, P.C.A.,

Plaintiff/Cross-Defendant - Appellee/Cross-Appellant,

v

MAJOR K. WELDON and CRYSTAL C. WELDON,

Defendants/Cross-Plaintiffs Appellants/Cross-Appellees.

FOR PUBLICATION
November 24, 1998
9:00 a.m.

No. 183696
Livingston Circuit Court
LC NO. 92-012114 PD

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

GAGE, J.

Defendants appeal as of right from a November 1994 trial court judgment awarding them $351,991.80. Defendants had filed a multiple count counterclaim against plaintiff alleging misconduct deriving from plaintiffs long-term relationship lending defendants money to support their farming operations. The jury found for defendants on several counts. Plaintiff cross-appeals as of right from the November 1994 judgment.

Plaintiff is a federally created entity that makes loans to its borrowers/members for use in conducting agricultural activities. Defendants are farmers, who since the fall of 1980 have received numerous loans from plaintiff. From 1980 to 1990, plaintiff loaned defendants $839,805.00, of which defendants themselves received $460,000.00, with plaintiff at defendants' direction paying the difference to defendants' third-party suppliers and creditors. Although the parties agreed that their business relationship was initially very satisfactory, the rela-

tionship deteriorated from 1988 through 1990 because defendants became increasingly unable to repay their debt. Plaintiff eventually foreclosed on various mortgages and other security interests that it possessed in defendants' property and equipment.

Ultimately, plaintiff initiated the instant suit seeking a deficiency judgment against defendants, and seeking to recover its remaining collateral. In response, defendants filed a ten-count counterclaim seeking recovery from plaintiff on theories ranging from bad faith breach of contract and breach of fiduciary duty to tortious interference with contract and fraud.

Regarding plaintiffs complaint, the parties in July 1994 entered into a consent judgment for defendants' deficiency. The judgment awarded plaintiff $249,458.81 plus interest, and ordered defendants to surrender various items of farm equipment collateral.

As to the counterclaim, the trial court granted plaintiff's motions for directed verdict regarding several counts, including counts V (invalid foreclosure), VIII (tortious interference) and X (fraud). The remaining claims proceeded to verdict. The jury returned verdicts for defendants in the amounts of $315,000.00 on count I (bad faith refusal to advance to defendants 1991 operating funds) and $500,600.00 on combined counts II and VI (plaintiff's bad faith breach of contract and breach of fiduciary duty in refusing defendants' January 2, 1990 request that it apply a portion of a crop proceeds check to a mortgage held by Federal Land Bank (FLB), another creditor of defendants). The jury also found for defendants on count VII plaintiff obtained May 1990 mortgage on a property known as the Partaka farm by duress), but awarded no damages on this count. However, the trial court set aside the jury's verdict for defendants on this count as inconsistent with the jury's award of damages to defendants for the loss of the same real estate. On the remaining counts III (bad faith failure to lend funds for completion of grain drying system), IV (bad faith failure to lend funds for completion of grain storage barn) and IX (tortious interference), the jury found for plaintiff.

Pursuant to the parties' agreement, the trial court reduced defendants' award for loss of real estate by deducting from it the amount of

outstanding liens and encumbrances on defendants' property. Specifically, the trial court subtracted from defendants' award $513,599.28 in liens, encumbrances and taxes, resulting in a preinterest net judgment of $301,400.72 for defendants.

Defendants first contend that the trial court erred in granting plaintiff a directed verdict on count V of defendants' countercomplaint, which alleged that plaintiff did not have a valid mortgage on a property known as the Hudson farm, and therefore improperly foreclosed on this property. We review de novo the trial court's grant of a directed verdict. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In reviewing the trial court's ruling, we examine the testimony and all legitimate inferences that may be drawn in the light most favorable to the nonmoving party. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998). Directed verdicts are appropriate only when no factual question exists on which reasonable minds may differ. *Meagher, supra*.

Defendants argue that the trial court improperly granted plaintiff a directed verdict when a question of fact existed regarding the interpretation of a clause in the mortgage plaintiff held on the Hudson farm. The trial court concluded that the mortgage contained a clear and unambiguous future advance clause. Defendants insist that the trial court erred in refusing to entertain parol evidence, which, they allege, would have shown that the parties did not intend the mortgage document to represent the complete integration of their agreement, and which would have clarified that the parties intended the mortgage to secure repayment of only the original mortgage principal amount, not any future advances. Defendants alleged that they had satisfied the original mortgage principal amount, and that therefore plaintiff's foreclosure on the Hudson farm was invalid if the mortgage did not also cover its subsequent loans to defendants.

While the trial court erred in neglecting to consider the documents executed by the parties contemporaneously with the mortgage for the purpose of determining whether the mortgage represented a complete integration of the parties' agreement, this error was harmless. A finding that the parties intended a written instrument to be a

complete expression of their agreement as to the matters covered is a prerequisite to the application of the parol evidence rule. *NAG Enterprises, Inc v All State Industries, Inc*, 407 Mich 407, 410; 285 NW2d 770 (1979). Extrinsic evidence of prior or contemporaneous agreements or negotiations is admissible as it bears on this threshold question of whether the written instrument is such an integrated agreement. *Id.* In this case, the mortgage itself refers to supplementary documents evidencing plaintiff's September 1982 $15,000.00 loan to defendants:

> IN CONSIDERATION of the loan(s) by [plaintiff] to [defendants], and to secure the repayment of the loan(s) made by [plaintiff] to [defendants] in the aggregate *principal sum of $15,000.00*, together with interest thereon, *evidenced by a Basic Loan Agreement between the parties or Promissory Note dated 9-3-82*[1] *and any Supplementary Loan Agreements or Promissory Notes (the Basic Loan Agreement, the Supplementary Loan Agreements and Promissory Notes are hereinafter collectively called "Loan Agreement"), and any renewals, extensions, or modifications thereof,* **together with all other additional or future loans, advances or readvances heretofore or hereafter made by [plaintiff] to [defendants], together with interest thereon**, and to secure the performance and observance by [defendants] of each and every term, covenant, agreement and condition contained herein or in the Loan Agreement, [defendants] do[] hereby mortgage, warrant, grant, convey and assign unto [plaintiff] . . . the following described real estate. . . . [Emphasis added.]

Defendants thus correctly suggest that the trial court erred to the extent that it declined to review a loan application, two supplementary loan agreements and a notice of defendants' right of recission of the mortgage, executed together with the mortgage, to determine to what extent the parties intended the mortgage's terms to govern their agree-

---

[1] The parties executed and recorded on June 20, 1985 a document entitled "Affidavit Correcting Mortgage." This affidavit provided that the September 3, 1982 date of the Basic Loan Agreement referenced in the mortgage was inaccurate, and that the date should read April 30, 1984. This correction reflects the parties' execution of a new Basic Loan Agreement on April 30, 1984, but does not affect our instant analysis.

ment.

However, the trial court did not err in granting plaintiff's motion for directed verdict because none of the contemporaneously executed documents cited by defendants contradicted the mortgage's language regarding future advances. The supplementary loan agreements executed with the mortgage address only various loan disbursements and repayment terms and conditions. The notice of recission acknowledges the mortgage transaction "dated September 3, 1982, in the amount of $15,050.00 between [plaintiff] and [defendants]," and informs defendants that they may rescind the mortgage within three business days. The loan application simply indicates that defendants wanted $15,000.00 in exchange for a mortgage, and proposes a repayment plan. While defendants claim that plaintiff's failure to check a box on the loan application marked "Open End" indicates that the parties did not intend the mortgage to secure future advances, absolutely nothing in either the loan application or the other contemporaneously executed documents referenced by defendants suggests the parties intended other than that the mortgage would secure future advances. The mortgage's language securing future advances is clear, unambiguous and uncontradicted by these other documents. Therefore, we conclude that the trial court properly interpreted the language as a matter of law, *Meagher, supra* at 721, and properly granted plaintiff's motion for directed verdict. *Id.* at 708 (directed verdict appropriate when no factual question exists).

Next, defendants raise several challenges to the trial court's setoffs against their damages awards. Plaintiff's cross-appeal asserts that the trial court erred in denying its motions for judgment notwithstanding the verdict (JNOV) regarding the jury's verdicts for defendants. Because plaintiff's cross-appeal raises issues dispositive of defendants' remaining arguments on appeal, we consider plaintiff's arguments first.

Plaintiff contends that the trial court erred by denying its motion for JNOV on count I of defendants' countercomplaint, which alleged that plaintiff in bad faith breached an agreement to lend defendants operating funds for the 1991 growing season. A motion for JNOV should be granted only when there was insufficient evidence presented

to create an issue for the jury. *Pontiac School Distr v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 612; 563 NW2d 693 (1997), lv gtd in part 457 Mich 870 (1998). It is improper where reasonable minds could differ on issues of fact. *Michigan Microtech, Inc v Federated Publications, Inc*, 187 Mich App 178, 186; 466 NW2d 717 (1991). When deciding a motion for JN0V, a trial court must examine the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party. *McLemore v Detroit Receiving Hospital and University Med Ctr*, 196 Mich App 391, 395, 493 NW2d 441(1992). This Court reviews de novo the trial court's ruling on a motion for JNOV. *Meagher, supra.*

As a matter of law, defendants presented insufficient evidence from which a jury could have found that plaintiff in bad faith breached an agreement between the parties that it would finance defendants' 1991 farming operations. In October 1990, loan officers of plaintiff visited defendants' farm to contemplate restructuring defendants' outstanding debt. Conflicting testimony was presented at trial concerning the specificity and definiteness of plaintiff's alleged promise to lend 1991 operating funds. While lenders and borrowers frequently enter into preliminary discussions of whether a loan will be refinanced or further credit will be extended, neither general discussions of extending credit, nor past renewals of credit should lead a borrower to reasonably believe that credit will be extended or renewed again and again. *State Bank of Standish v Curry*, 442 Mich 76, 87; 500 NW2d 104 (1993) ("Nor does a course of past dealing where there has been a pattern of renewal in itself amount to sufficient assent to continue dealing or that renewal will be indefinite."). However, because in the context of reviewing plaintiff's motion for JNOV we must examine the evidence and all its legitimate inferences in defendants' favor, *McLemore, supra*, we conclude that defendants' testimony that plaintiff in October 1990 promised to lend 1991 operating funds to the defaulted defendants on the condition that defendants held an equipment auction that raised at least $40,000.00 created an issue of fact for the jury regarding the existence of an agreement to lend. Although defendants did not state that the parties had agreed at the October 1990 meeting to any of the material terms required for the formation of a valid contract, in-

cluding the amount of the loan, the interest rate, the method of repayment or the collateral securing the loan, *Curry, supra* at 88, we will assume that the jury derived these terms from the parties' controlling Basic Loan Agreement and prior course of dealing, and, in the context of this motion for JNOV, we will defer to the jury's conclusions on these matters.

However, even assuming that the essential terms of the alleged agreement could be substantiated from the parties' Basic Loan Agreement and course of dealing or lending history, defendants' claim that plaintiff in bad faith refused to advance 1991 operating funds must still fail as a matter of law. The Basic Loan Agreement governing the parties' various supplemental loans and disbursements, dated November 20, 1986, clearly authorizes plaintiff in the event of defendants' default to refuse to lend or disburse additional money.

> 3.4 **Conditions for Loans and Disbursements**
>
> Each of the following provisions shall condition the obligation of [plaintiff] to make loans and Loan Disbursements hereunder:
>
> A. [Plaintiff] has the right to review the loan eligibility and credit worthiness of [defendants] before each loan and Loan Disbursement requested. If as the result of such review [plaintiff] deems itself insecure, or if it would become insecure by such loan or Loan Disbursement, then in [plaintiff]'s sole discretion, it need not make any further loan or Loan Disbursement hereunder.
>
> * * *
>
> 6.0 **Default**
>
> The occurrence of any of the following shall constitute a default by [defendants] in all loans outstanding hereunder which shall authorize and permit [Plaintiff] to (a) demand immediate payment of all Indebtedness hereunder, (b) refuse further loans and/or Loan Disbursements . . . .
>
> A. Failure of [defendants] to comply with or perform any of the terms and conditions contained herein or in any mortgage, pledge, security agreement, SUPPLEMENTARY LOAN AGREE-

> MENT or other written document executed by [defendants] in connection herewith . . . .
>
> ***
>
> C. If [defendants] fail[] to pay all Indebtedness as and when demanded by [plaintiff] ...
>
> D. If [defendants] [are] in default in any Indebtedness to [plaintiff] under any loan not otherwise governed by the terms hereof.
>
> * * *
>
> F. If [plaintiff] should at any time in good faith deem it self insecure.

Our review of the record indicates that by 1990 and 1991 defendants had undisputedly defaulted on outstanding loans, having missed payments on separate loan obligations despite several repayment extensions granted by plaintiff. Defendants had outstanding debt in October 1990, at the time plaintiff allegedly promised to supply defendants' 1991 operating funds. According to the parties' supplementary loan agreements of record, by the beginning of 1991 defendants owed $79,692.50 plus interest on loan #10003. Defendants also owed by the beginning of 1991 approximately $200,000 on loan #20001, the entirety of which had come due earlier in 1990 when defendants defaulted on an outstanding installment. In November 1990, plaintiff had granted defendants extensions on the repayments of loans #10003 and #20001, requiring payments of $89,440.88 on loan #10003 and $75,060.81 on loan #20001 by February 1, 1991. Defendants failed to make these payments. Thus, whatever the agreement regarding operating funds plaintiff may have made with defendants in October 1990, plaintiff's refusal to lend or disburse 1991 operating funds was a proper exercise of a bargained for right under the parties' Basic Loan Agreement, ¶ 6.0. No applicable law would obligate plaintiff to advance defendants further operating funds despite defendants' repeated breaches of their repayment obligations, breaches occurring both before and after plaintiff's alleged promise to lend 1991 operating funds. In our view, plaintiff has not assumed a duty to continually and endlessly fund defendants' operations. To perpetually bind a lender to the borrower in

this manner, despite the lender's clear denial of the assumption of such a responsibility, would certainly discourage the practice of financing, and we decline to impose this perpetual obligation on plaintiff when the parties' contract clearly provides that they intended otherwise. Thus, because defendants had undisputedly defaulted on outstanding loans, the clear and unambiguous terms of the parties' agreement relieved plaintiff of any obligation to lend defendants further operating funds for 1991.

Additionally, given defendants' extreme debt and default, plaintiff's 1991 refusal to provide further operating funds cannot as a matter of law constitute bad faith. See *Commercial Union Ins Co v Liberty Mutual Ins Co*, 426 Mich 127, 136-137; 393 NW2d 161 (1986) (Good faith denials, offers of compromise, or other honest errors of judgment are not sufficient to establish bad faith. Further, claims of bad faith cannot be based on negligence or bad judgment, as long as the actions were made honestly and without concealment. Bad faith is reflected by conduct that is arbitrary, reckless, indifferent, or that intentionally disregards the interests of the person to whom a duty is owed.). In light of defendants' growing debt and missed repayments, plaintiff's denial to advance more funds cannot be considered arbitrary. Because then as a matter of law plaintiff's refusal to loan further funds does not constitute bad faith, the jury should not have been permitted to address count I of defendants' countercomplaint.

Plaintiff next argues that the trial court erred by denying its motion for directed verdict regarding count II of defendants' countercomplaint, which alleged that plaintiff in bad faith refused to remit a portion of a crop proceeds check, in which plaintiff held a security interest, to the Federal Land Bank to satisfy a mortgage payment owed by defendants. Plaintiff applied $71,191.54 Of the $83,000.00 crop proceeds check, which was made payable to plaintiff and defendants jointly, as repayment of the entire principal and interest balance on defendants' 1989 operating loan, for which loan the crop proceeds constituted collateral. As a matter of law, plaintiff's refusal to relinquish its bargained-for rights in collateral does not qualify as bad faith.

> The duty of good faith imposed upon contracting parties does not compel a lender to surrender rights which it has been given by statute or by the terms of its contract. Similarly, it cannot be said that a lender has violated a duty of good faith merely because it has negotiated terms of a loan which are favorable to itself. As such, a lender generally is not liable for harm caused to a borrower by refusing to advance additional funds, release collateral, or assist in obtaining additional loans from third persons. *Creeger Brick & Building Supply, Inc v Mid-State Bank & Trust Co*, 385 Pa Super 30, 36-37 (1989).

See also *Van Arnem Co v Manufacturers Hanover Leasing Corp*, 776 F Supp 1220, 1223 (ED Mich, 1991) (A line of credit lender is not by definition "the borrower's fiduciary. The lender remains entitled to advance its own interests by enforcement of contract terms, and is not required to forego enforcement of contract terms to put the borrower's interests ahead of its own."); *Price v Wells Fargo Bank*, 213 Cal App 3d 465, 479 (1989) (Where appellants argued "that the bank owed them a duty of reasonable forbearance in enforcing its creditor's remedies," the court found no authority supporting appellants' argument and explained that "[c]ontracts are enforceable at law according to their terms. The covenant of good faith . . . . does not impose any affirmative duty of moderation in the enforcement of legal rights."). Thus, we conclude that the trial court erred in denying plaintiff's motion for JNOV on count II of defendants' counterclaim.[2] Assuming arguendo that a valid contract to lend 1991 operating funds existed, that plaintiff in

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[2] The record contains an April 14 1989 supplementary loan agreement covering a $50,532.50 operating loan (denominated as loan #2) disbursement that requires this amount plus interest be repaid by February 1, 1990. However, a December 31, 1989 statement of defendants' accounts reflects a balance for loan #2 of $66,246.50, indicating that defendants borrowed more operational funds for 1989 than reflected in the April 14 supplementary loan agreement. Although the record was unclear regarding on what specific date loan #2's balance above $50,532.00 plus interest was due, as discussed above, we find that plaintiff did not act in bad faith in utilizing its collateral to satisfy in its entirety defendants' 1989 operating loan. Furthermore, a November 30, 1989 supplementary loan agreement shows that defendants also owed as of January 1, 1990 a $20,000.00 plus interest payment on the $195,188.65 balance of their capital loan (loan #20001). Therefore, because the $83,000.00

bad faith breached its obligation to lend, and that plaintiff in bad faith refused to relinquish collateral, we agree with plaintiff that defendants absolutely failed as a matter of law to establish support for the jury's awards of damages resulting from plaintiff's actions. The parties agreed at trial that defendants' breach of good faith claims were contractual in nature. Damages recoverable for breach of contract are those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made. *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401, 414; 295 NW2d 50 (1980). Application of this principle in the commercial contract situation generally results in a limitation of damages to the monetary value of the contract had the breaching party fully performed under it. *Id.* at 414-415.

Regarding plaintiff's alleged failure to lend, defendants did not establish that this failure resulted in damages amounting to the $315,000 that the jury awarded. A party to a contract who is injured by another's breach of the contract is entitled to recover from the latter damages for only such injuries as are the direct, natural, and proximate result of the breach. *Stewart v Rudner*, 349 Mich 459, 468-469; 84 NW2d 816 (1957). Defendants admitted that they obtained alternate financing for their 1991 farming operations from a neighbor. Therefore, plaintiff's alleged failure to lend did not proximately result in defendants suffering any damages beyond whatever limited, incidental expense they incurred in securing the alternate financing, and certainly no damages remotely approaching the $315,000 awarded by the jury.

Regarding plaintiff's alleged bad faith refusal to surrender its collateral to the Federal Land Bank, defendants also failed to introduce support for the jury's verdict awarding them damages of $500,000 on this count. The Federal Land Bank extended until February 1, 1991 the due dates of both defendants' January 1, 1990 and January 1, 1991 mortgage payments, but defendants still failed to make the payments. Thus, where defendants' own inaction intervened, no legal causation exists between plaintiff's refusal and the eventual foreclosure on defendants' property. Furthermore, defendants admitted that they could

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crop proceeds check was insufficient to satisfy all of defendants' loan obligations, plaintiff exercised sound lending practice in refusing to advance $10,000.00 to the Federal Land Bank.

have borrowed money and paid the Federal Land Bank themselves. Therefore, defendants' failure to mitigate any damages allegedly caused by plaintiff's refusal also precludes the jury's $500,000 award of damages. See *M &V Barocas v THC, Inc*, 216 Mich App 447, 449; 549 NW2d 86 (1996) (It has long been recognized that the law should encourage a potential plaintiff to take reasonable actions to minimize the extent of damages arising from the wrongful breach of a contract.). As the Michigan Supreme Court long ago explained, "The law is well settled that a case should not be submitted to the jury where a verdict must rest upon a conjecture or guess." *Scott v Boyne City, Gaylord & Alpena R Co*, 169 Mich 265, 272; 135 NW 110 (1912). Because the jury was permitted in the instant case to speculate regarding the existence of a contract, whether plaintiff acted in bad faith or illegally, and regarding the amount of damages defendants allegedly suffered, we conclude that the trial court erred in denying plaintiff's motions for JNOV regarding counts I and II of defendants' countercomplaint.

Plaintiff further challenges the trial court's denial of its motion for JNOV regarding count VI of defendants' countercomplaint alleging that plaintiff owed defendants a fiduciary duty and breached it by refusing defendants' request that it remit crop proceeds to the Federal Land Bank. A fiduciary relationship, which generally does not arise within the lender-borrower context, exists when there is a reposing of faith, confidence and trust and the placing of reliance by one on the judgment and advice of another. *Ulrich v Federal Land Bank of St Paul*, 192 Mich App 194, 196-197; 480 NW2d 910 (1991); *Smith v Saginaw Savings & Loan Ass 'n*, 94 Mich App 263, 274; 288 NW2d 613 (1979). The mere facts that plaintiff as the lender maintained control over the terms of defendants' loan repayment, or participated in discussions regarding what crops to grow and how much money defendants would need to borrow at various times are insufficient as a matter of law to establish a fiduciary relationship between plaintiff lender and defendant borrowers. See *Ulrich, supra* (The borrower's allegations of inexperience and reliance on the lender are insufficient to establish a fiduciary relationship). The testimony of plaintiff's former loan officer and defendants revealed that defendants exercised ultimate control over the operation of their farm, including determining what land to rent and purchase, what equipment to purchase, in what

land to plant crops, the nature and amount of each crop to grow, when and to whom to sell the crops, and other business-related decisions, and that no profit-sharing occurred between defendants and plaintiff. Because the record reflects no evidence supporting the existence of a fiduciary relationship between plaintiff and defendant beyond the ordinary lender-borrower relationship, the trial court should have granted plaintiff's motion for JNOV regarding this claim.

Plaintiff finally claims that the trial court should have additionally granted its motion for JNOV regarding defendants' claim that plaintiff by duress obtained a mortgage on one of defendants' farms. This Court has explained that,

> [t]o succeed with respect to a claim of duress, [defendants] must establish that they were illegally compelled or coerced to act by fear of serious injury to their persons, reputations, or fortunes. Fear of financial ruin alone is insufficient to establish economic duress; it must also be established that the person applying the coercion acted unlawfully. [*Enzymes of America, Inc v Deloitte, Haskins & Sells*, 207 Mich App 28, 35; 523 NW2d 810 (1994), rev'd in part on other grounds, *Porta-John Corp v Deloitte, Haskins & Sells*, 450 Mich 889; 539 NW2d 513 (1995).]

Because defendants have not alleged that plaintiff acted illegally, their claim of duress is meritless, and we conclude that the trial court erred in allowing it to proceed to the jury.

Given our conclusion affirming the trial court's grant of plaintiff's motion for directed verdict regarding count V of defendants' countercomplaint, and our conclusions reversing the trial court's denials of plaintiff's motions for directed verdict regarding counts I, II, VI and VII of defendants' countercomplaint, we need not reach defendants' various remaining allegations that the trial court erred in calculating setoffs to their jury awards. We simply note the following in response to defendants' argument that the trial court erred in determining that a breach of contract by plaintiff lender that caused defendants to lose certain property would entitle defendants to recover only the amount of their loss of equity in the property—the property's market value on the foreclosure date less expenses saved due to foreclosure.

United California Bank v Prudential Ins Co of America, 140 Ariz 238, 295-296, 308-309 (1983). While "[t]he traditional measure of damages for breach of a contract to loan money is the additional interest required for a replacement loan . . . . this measure has been broadened to include loss of equity if the breach of the loan agreement caused the borrower to lose ownership of its assets." *Id.* at 295-296.

> It is only "the actual loss" in the given case that can be recovered by the landowner. That measures the amount of his damages. Where there is a lien indebtedness against the land the indebtedness must be taken into consideration in determining the amount of "actual loss" the landowner sustained at the time the title was lost. The landowner, owing such lien indebtedness, must pay it, and is bound to pay it. He is not legally relieved of its final payment by the mere act of the party defaulting in lending the money to discharge the lien indebtedness. Consequently, in such cases, the measure of liability is the difference in the lien indebtedness, principal and interest, and the value of the land at the time it is lost by reason of foreclosure of such lien. It is the landowner's interest in the land, represented by the value of his equity, that he would be entitled to as compensation. For legally the value of the equity is his only "actual loss." [*FB Collins Inv Co v Sallas*, 260 SW 261, 265 (Tx App, 1924).]

See also *Lincor Contractors, Ltd v Hyskell*, 39 Wash App 317, 321-322 (1984) (financing company's refusal to lend entitled property owner to recover value of its equity in building); *St Paul at Chase Corp v Manufacturers Life Ins Co*, 262 Md 192, 241-244 (I971) (breaching party's refusal to finance entitled property owner to recover for loss of equity, but because owner had no equity it could recover no damages for building's loss).

Defendants additionally challenge the trial court's decision to award plaintiff attorney fees and costs, alleging that plaintiff should not be entitled to fees and costs when it breached its contractual duties. However, in light of our conclusions reversing the jury's verdicts for defendants, defendants' argument is without merit. Furthermore, in stipulating to judgment for plaintiff on its complaint, defen-

dants on the record agreed that plaintiff would receive attorney fees in an amount to be later determined by the trial court. Because error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence, defendants have waived our review of this issue. *Phinney v Perlmutter,* 222 Mich App 513, 537; 564 NW2d 532 (1997).

Finally, defendants argue that several rulings of the trial court illustrate that it was biased against them. Our review of these various, brief contentions, however, reveals no improper actions taken by the trial court, and no unfair prejudice suffered by defendants.

Affirmed in part, reversed in part and remanded for entry of judgment for plaintiff on counts I, II, VI and VII of defendants' countercomplaint. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Martin M. Doctoroff

STATE OF MICHIGAN
COURT OF APPEALS

FARM CREDIT SERVICES OF MICHIGAN'S HEARTLAND, P.C.A.

FOR PUBLICATION

Plaintiff/Cross-Defendant - Appellee/Cross-Appellant,

v

No. 183696
Livingston Circuit Court
LC NO. 92-012114 PD

MAJOR K. WELDON and CRYSTAL C. WELDON,

Defendants/Cross-Plaintiffs Appellants/Cross-Appellees.

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

JANSEN, P.J. (concurring in part and dissenting in part).

I respectfully dissent from the majority's decision to reverse on counts I, II, VI, and VII of defendants' countercomplaint and remand for entry of judgment in favor of plaintiff regarding those claims. I would affirm the jury's verdict and the trial court's rulings in all respects.

I agree with the majority with respect to defendants' issues on appeal to the extent that defendants have not raised any issue requiring reversal. Regarding the issue of setoff, I would find no error because the parties agreed on the record that the jury would be instructed that the trial court would set off any real estate liens on defendants' property from any award, and at the post-trial hearing, the trial court noted that the amount of the setoff represented superior or senior liens that would become plaintiff's liability.

With respect to the cross appeal, I respectfully dissent. I would hold that the trial court did not err in denying plaintiff's motion for

judgment notwithstanding the verdict regarding counts I (bad faith breach of contract for failure of plaintiff to loan 1991 operating funds to defendants), count II bad faith breach of contract when plaintiff refused to surrender collateral proceeds to pay other of defendants' creditors), count VI (breach of fiduciary duty by plaintiff in failing to release collateral proceeds to tender payment on Federal Land Bank's mortgage), and count VII (duress by plaintiff in procuring the May 1990 mortgage on the Partaka farm) because there were factual questions for the jury to resolve. I do not believe that defendants' counterclaim is deficient as a matter of law as the majority apparently holds.

The standard of review for JNOV requires review of the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Orzel v Scott Drug Co*, 449 Mich 550, 557; 437 NW2d 208 (1995). Only if the evidence so viewed fails to establish a claim as a matter of law, should a motion for JNOV be granted. *Id.* at 558. I would find that defendants presented sufficient evidence to support each claim and that the majority is simply, and improperly, substituting its own judgment for that of the jury. See McLemore v Detroit Receiving Hosp, 196 Mich App 391, 395; 493 NW2d 411 (1.992).

With regard to count I, defendants alleged a bad faith breach of an agreement to loan defendants operating funds for 1991. There was evidence that loan officers of plaintiff's office went to defendants' farm in October 1990 and that the loan officers promised to grant a loan in the spring of 1991 if defendants agreed to hold an equipment auction and pay plaintiff $40 000. Defendants, in December 1990, sold certain machinery and paid plaintiff over $50,000 from the proceeds. Further, it was defendants' contention that the promise to loan additional money in the spring of 1991 falls within the Basic Loan Agreement. The terms of the Basic Loan Agreement clearly contemplate additional loans made in the future and specifically states that all loan applications and loans made in the future are covered by the terms of the Basic Loan Agreement. Therefore, the essential terms of the agreement to loan money for the spring of 1991 are covered by the Basic Loan Agreement. Additionally, defendants applied for an operating loan in 1990, which plaintiff approved and extended repayment dates on all outstand-

ing debt.[1] Finally, even if the terms of the Basic Loan Agreement relieved plaintiff of any obligation to lend further operating funds in 1991, there was evidence that plaintiff had agreed to do so, even if not obliged to do so.

Accordingly, the jury could find that plaintiff, in bad faith, breached an agreement to loan defendants operating funds for 1991.

With respect to count II, defendants alleged a bad faith breach of contract when plaintiff refused to surrender its collateral proceeds to pay other creditors of defendants. There was evidence that, in January 1990, Crystal Weldon instructed one of plaintiff's employees to apply $10,000 of a total check amount of $83,000 to a mortgage payment owed by defendants to Federal Land Bank The majority holds that plaintiff's refusal to relinquish its bargained-for rights in collateral does not qualify as bad faith. However, the critical fact here is that the contract (the April 19, 1989 supplementary loan agreement) required a payment of $50,532 principal on the operating note, and plaintiff applied $66,246. 50 to pay the principal on that note. Thus, the check for $83,000 covered the amount that defendants owed on the contract to plaintiff, and covered the additional $10,000 that defendants asked be applied to the mortgage with the Federal Land Bank. Moreover, defendants did not discover until several months after instructing plaintiff to apply $10,000 toward the mortgage that plaintiff did not do so. Accordingly, the jury could find that plaintiff, in bad faith, breached a contract when it failed to apply $10,000 toward the mortgage as instructed by defendants.

Further, there was sufficient evidence presented to find that the failure to apply to $10,000 toward the mortgage with the Federal Land Bank caused damages in the amount the jury awarded, $500,000. Because the $10,000 was not applied toward the mortgage, the mortgage' was foreclosed and the Caskey farm was later sold to a third party. The loss of the Caskey farm included the loss of crop income derived from the farm as testified to by Major Weldon. Thus, there is evidence sup-

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[1] Even this fact is conceded to in plaintiff's brief, as cross-appellant, at page six.

porting the jury's finding of causation between the breach and defendants' damages.

With respect to count VI, defendants alleged breach of a fiduciary duty by plaintiff in failing to release its collateral proceeds (the $10,000) toward the mortgage with the Federal Land Bank. Defendants note that there is a power of attorney, dated July 6, 1988, in which the Farm Credit Bank of St. Paul granted agent and attorney-in-fact status to plaintiff. Other evidence in this regard is that paragraph 3.1 of the Basic Loan Agreement states that plaintiff "is unwilling and unable to lend money without retaining ultimate control of the repayment requirements." There was other testimony from Crystal Weldon that she, her husband, and Per Peterson (plaintiff's loan officer) decided together what crops would be grown, as well as other financial decisions. Peterson, as well, testified that he and defendants would mutually decide how much money would be needed for operations and machinery, and admitted that defendants were relying on him to sit down with them and discuss what was happening and bring any problems to their attention.

Under these circumstances, I would hold that the jury could properly determine that there was a fiduciary relationship because there was a reposing of faith, confidence, and trust and a placing of reliance by defendants on the judgment and advice of plaintiff.

With respect to count VII, there is no need to address this issue because the trial court set aside the jury's verdict for defendant in the judgment, finding that the relief sought by defendants in this count was inconsistent with the relief defendants sought and the verdict rendered by the jury. Further, contrary to defendants' argument, it was not error for the trial court to set aside the jury's verdict on count VII because this effectively validated plaintiff's mortgage on the Partaka farm and its purchase price of the premises at the foreclosure sale, thus reducing defendants' debt.

As its final argument, plaintiff contends that the damages awarded defendants are excessive, contrary to contract law, and against the great weight of the evidence. I disagree. Once injury is proved, recovery is

not precluded simply because proof of the amount of damages is not mathematically precise. *Godwin v Ace Iron & Metal Co*, 376 Mich 360, 368; 137 NW2d 151 (1965). Further, where reasonable minds could differ regarding the level of certainty to which damages have been proved, this Court is careful not to invade the fact finding of the jury and substitute its own judgment. *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995). Finally, where, the award "falls reasonably within the range of evidence and within the limits of what reasonable minds would deem just compensation for the injury sustained, the award should not be disturbed." *Frohman v Detroit*, 181 Mich App 400, 415; 450 NW2d 59 (1989). Here, the award falls within the range of evidence, is not excessive, and is not contrary to contract law.

I would affirm the trial court's final judgment in all respects.

/s/ Kathleen Jansen

Appendix B

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

O R D E R

(Entered August 31, 1999)

113695

FARM CREDIT SERVICES
OF MICHIGAN'S
HEARTLAND, P.C.A.

Plaintiff-Appellee,

v

MAJOR K. WELDON and
CRYSTAL C. WELDON,
Defendants-Appellants.

Elizabeth A. Weaver,
Chief Justice
James H. Brickley
Michael F. Cavanagh
Marilyn Kelly
Clifford W. Taylor
Maura D. Corrigan
Robert P. Young, Jr.,
Justices

SC: 113695
COA: 183696
Livingston CC: 92-12114-PD

On order of the Court, the application for leave to appeal from the November 24, 1998, decision of the Court of Appeals, is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

f0824 /s/ August 31, 1999 Jacqueline B. McKinnor

(Seal of the Michigan Supreme Court, Lansing) Deputy Clerk

Appendix C

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 44TH JUDICIAL CIRCUIT

FARM CREDIT SERVICES OF
MICHIGAN'S HEARTLAND P.C.A.
Plaintiff and
Counter-Defendant,

vs.

File No. 92-12114-PD
Hon. Daniel A. Burress
(P 11445)

MAJOR K. WELDON and CRYSTAL C. WELDON, his wife, jointly and severally,
Defendants and
Counter-Plaintiff.

LEARMAN, PETERS, SAROW & McQUILLAN, P.L.C.
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JUDGMENT ON COUNTER-PLAINTIFFS' COMPLAINT

At a session of said Court held in the Livingston County Law Center in Howell, Michigan, on the 4th day of November, 1994.

PRESENT: *HONORABLE DANIEL A. BURRESS,*
Livingston County Circuit Judge.

THIS MATTER having come on for trial on May 3, 1994, on the Complaint of the Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, and upon the Counterclaim of the Defendants/Counter-Plaintiffs', Major and Crystal Weldon, and the Court having made its rulings regarding Motions for Directed Verdict at the conclusion of the Counter-Plaintiffs' proofs, and the jury having returned a verdict in this matter on May 19, 1994, and the Court having considered the arguments of the parties regarding the terms and provisions of the Judgment to be entered in this matter, and having made its findings of fact and conclusions of law on the record on October 31, 1994, and otherwise being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Judgment be and is hereby entered for the Counter-Plaintiffs Major and Crystal Weldon, against the Counter-Defendant, Farm Credit Services of Michigan's Heartland, PCA, on Count I, Count II, and Count VI of their Counterclaim in the amount of $815,000.00 less a setoff for real estate liens in the amount of $513,599.28, for a net Judgment of $301,400.72.

IT IS FURTHER ORDERED AND ADJUDGED that interest is further awarded to the Counter-Plaintiffs from the Counter-Defendant in the total amount of $50,591.08 from June 23, 1992, through October 31, 1994 and, therefore, total Judgment as of October 31, 1994, is established in the sum of $351,991.80. Interest shall continue to accrue at the statutory rate from November 1, 1994 and shall compound annually on July 1 of each year hereafter.

IT IS FURTHER ORDERED AND ADJUDGED that the amount of the Judgment set forth herein does not incorporate nor set off the Consent Judgment previously rendered in this matter on July 18, 1994, for the Plaintiff against the Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that the jury verdict for the Counter-Plaintiffs pertaining to the Counter-Plaintiffs' claim of duress in Count VII in the acquisition of a mortgage on the Partaka property described as follows:

The South 80 acres of the Northeast fractional 1/4 of Section

1, Town 2 North, Range 2 East, White Oak Township,
Ingham County, Michigan,

be and is hereby set aside, the Court having determined that the relief sought by the Counter-Plaintiffs in Count VII of their Counterclaim is inconsistent with the relief they sought and the verdict rendered by the jury as to damages.

IT IS FURTHER ORDERED AND ADJUDGED that the claims of the Counter-Plaintiffs set forth in Counts V, VIII and X of their Counterclaim be dismissed, and a judgment of no cause of action entered thereon, the Court having directed a verdict for the Plaintiff/ Counter-Defendant as to those claims upon conclusion of the Counter Plaintiffs' proofs.

IT IS FURTHER ORDERED AND ADJUDGED that the claims of the Counter-Plaintiffs set forth in Count III, Count IV, and Count IX of their Counterclaim be dismissed, and a judgment of no cause of action entered thereon, the jury having rendered a verdict for the Counter-Defendant, Farm Credit Services of Michigan's Heartland, PCA, with reference to those counts.

IT IS FURTHER ORDERED AND ADJUDGED that the Lis Pendens filed by the Counter-Plaintiffs, Major and Crystal Weldon, and recorded January 6, 1993, in Liber 1650, Page 0417-0418 of Livingston County Records, and recorded January 7, 1993, in Liber 2027, Page 799-801 of Ingham County Records, shall remain in effect pending the Plaintiff/Counter-Defendant' s motion after entry of this Judgment to have said Lis Pendens discharged and set aside.

/s/ Honorable Daniel A. Burress (P11445)
Livingston County Circuit Judge

APPROVED AS TO FORM:

LEARMAN, PETERS, SAROW & McQUILLAN, P.L.C.
By: /s/ John J. McQuillan (P25938)
Attorneys for Plaintiff/Counter-Defendant

/s/ Daniel L. Kraft (P37382)
Attorney for Defendants/Counter-Plaintiffs

Drafted by:
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Appendix D

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 44TH JUDICIAL CIRCUIT

FARM CREDIT SERVICES OF
MICHIGAN'S HEARTLAND P.C.A.
Plaintiff and
Counter-Defendant,

vs.

File No. 92-12114-PD
Hon. Daniel A. Burress
(P11445)

MAJOR K. WELDON and CRYSTAL C. WELDON, his wife, jointly and severally,
Defendants and
Counter-Plaintiff.

LEARMAN, PETERS, SAROW & McQUILLAN, P.L.C.
By: John J, McQuillan (P25938)
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Telephone: (517) 892-0591

DANIEL L. KRAFT (P37382)
Attorney for Weldons

CONSENT JUDGMENT AND ORDER
TAXING COSTS AND ATTORNEY FEES

At a session of said Court held in the Livingston County Law Center in Howell, Michigan, on the 18th day of July, 1994.

PRESENT: HONORABLE DANIEL A. BURRESS,
Livingston County Circuit Judge.

This matter having come on for trial on May 3, 1994, and the parties having stipulated to entry of a Consent Judgment for the Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, and against the Defendant/Counter-Plaintiffs, Major and Crystal Weldon, and the Court having made its determination of the appropriate amount to be taxed as reasonable attorney fees and costs pursuant to the contract between the parties, and otherwise being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Judgment be and is hereby entered for the Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, and against the Defendants, Major and Crystal Weldon, in the amount of $202,358.72 plus attorney fees in the amount of $40,854.50 and costs in the amount of $6,245.59, for a total Judgment of $249,458.81, plus interest to accrue from July 18, 1994, at the rate of 11.2% per annum on said sum; and

IT IS FURTHER ORDERED AND ADJUDGED that the following-described property shall be delivered immediately by Major and Crystal Weldon to the Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, to-wit:

Schien Semi Trailer; 28 ft.
White 4-150 D Tractor
White 2-105 D Tractor
Ford 5000 D Loader Tractor
JD 64 Front End Loader
Tyler Fertilizer Spreader
Hardi Sprayer Boom
Saddle Tank Set
2 Bale Wagons
M&W 1500 Round Baler
MF 750 D Combine
MF Corn Head
Super B 600 Grain Dryer
Dayton Air Compressor; 120 gal.
Cardinal Grain Leg; 90 ft.
Brock Wet Holding Bin
Patz Bunk Feeder
Grasshopper 1210 Lawn Mower; 40 ft.

Mueller Bulk Tank; 400 gal.
Master LP Gas Storage Tank
Power Washer
Livestock Gates
Silo Unloader; 16 ft.
Transfer Pump.

IT IS FURTHER ORDERED AND ADJUDGED that the Livingston County Sheriff shall assist the Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, in obtaining possession of the above-described items of property.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendants/Counter-Plaintiffs are hereby ordered to surrender possession of the above-described property to the Plaintiff upon its request.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, shall dispose of the above-described items of property in conformity with the provisions of MCLA §440.9504, and may deduct from the proceeds of sale all fees and expenses incurred in the liquidation of the collateral, including the reasonable expenses of retaking, holding, preparing for sale, and selling the collateral. If the amount realized from the sale of the collateral is insufficient to satisfy the indebtedness set forth in this Judgment, the Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, shall have a continuing judgment for any deficiency.

The Plaintiff, Farm Credit Services of Michigan's Heartland, PCA, shall give written notice to the Defendants, Major and Crystal Weldon, of the date, time and location of the proposed sale of the collateral by furnishing such notice at least two weeks prior to sale to the Weldons at their last known address by first class mail, with a copy of such notice furnished to their attorney.

IT IS FURTHER ORDERED AND ADJUDGED that if the sums realized from the sale of the above-described equipment are insufficient to satisfy this Judgment, the Clerk of the Court shall issue execution for the amount of the deficiency upon application of the attorneys

for the Plaintiff, without further notice to the Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that this Judgment shall not be subject to appeal, with the exception of the taxation of attorney fees and costs, the parties having stipulated to its entry and, therefore, constituting a Consent Judgment.

IT IS FURTHER ORDERED AND ADJUDGED that the Court shall retain jurisdiction of this matter for purposes of implementing the terms and provisions of this Judgment.

/s/ Honorable Daniel A. Burress (P11445)
Livingston County Circuit Judge

Drafted by:
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